

**§ 114. Construction**

(a) **CONSTRUCTION WORK IN GENERAL.**—The construction of any highways or portions of highways located on a Federal-aid system shall be undertaken by the respective State highway departments or under their direct supervision. Except as provided in section 117 of this title, such construction shall be subject to the inspection and approval of the Secretary. The construction work and labor in each State shall be performed under the direct supervision of the State highway department and in accordance with the laws of that State and applicable Federal laws. Construction may be begun as soon as funds are available for expenditure pursuant to subsection (a) of section 118 of this title. After July 1, 1973, the State highway department shall not erect on any project where actual construction is in progress and visible to highway users any informational signs other than official traffic control devices conforming with standards developed by the Secretary of Transportation.

(b) **CONVICT LABOR AND CONVICT PRODUCED MATERIALS.**—

(1) **LIMITATION ON CONVICT LABOR.**—Convict labor shall not be used in construction of highways or portions of highways located on a Federal-aid system unless it is labor performed by convicts who are on parole, supervised release, or probation.

(2) **LIMITATION ON CONVICT PRODUCED MATERIALS.**—Materials produced after July 1, 1991, by convict labor may only be used in such construction—

(A) if such materials are produced by convicts who are on parole, supervised release, or probation from a prison; or

(B) if such materials are produced by convicts in a qualified prison facility and the amount of such materials produced in such facility for use in such construction during any 12-month period does not exceed the amount of such materials produced in such facility for use in such construction during the 12-month period ending July 1, 1987.

(3) **QUALIFIED PRISON FACILITY DEFINED.**—As used in this subsection, “qualified prison facility” means any prison facility in which convicts, during the 12-month period ending July 1, 1987, produced materials for use in construction of highways or portions of highways located on a Federal-aid system.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 86-657, § 8(f), July 14, 1960, 74 Stat. 525; Pub. L. 93-87, title I, § 115, Aug. 13, 1973, 87 Stat. 258; Pub. L. 97-424, title I, § 148, Jan. 6, 1983, 96 Stat. 2131; Pub. L. 98-473, title II, § 226, Oct. 12, 1984, 98 Stat. 2030; Pub. L. 100-17, title I, § 112(a), (b)(1), Apr. 2, 1987, 101 Stat. 148; Pub. L. 102-240, title I, § 1019, Dec. 18, 1991, 105 Stat. 1948.)

**AMENDMENTS**

1991—Subsec. (b)(2). Pub. L. 102-240, inserted “after July 1, 1991,” after “Materials produced” in introductory provisions.

1987—Subsec. (a). Pub. L. 100-17, § 112(b)(1), inserted heading.

Subsec. (b). Pub. L. 100-17, § 112(b)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “Convict labor or materials produced by con-

vict labor shall not be used in such construction unless it is labor performed by convicts who are on parole or probation.”

1984—Subsec. (b). Pub. L. 98-473 which directed the insertion of “, supervised release,” after “parole” effective Nov. 1, 1987, was not executed, because of intervening general amendment of subsec. (b) by Pub. L. 100-17, § 112(a), which contained “, supervised release,” after “parole” wherever appearing.

1983—Subsec. (b). Pub. L. 97-424 inserted “or materials produced by convict labor” after “Convict labor”.

1973—Subsec. (a). Pub. L. 93-87 amended last sentence generally. Prior to amendment, last sentence read as follows: “On any project where actual construction is in progress and visible to highway users, the State highway department shall erect such informational sign or signs as prescribed by the Secretary, identifying the project and the respective amounts contributed therefor by the State and Federal Governments.”

1960—Subsec. (a). Pub. L. 86-657 required State highway departments to erect, on any project where actual construction is in progress and visible to highway users, such informational sign or signs as prescribed by the Secretary, identifying the project and the respective contributions therefor by the State and Federal Governments.

**EFFECTIVE DATE OF 1991 AMENDMENT**

Amendment by Pub. L. 102-240 effective Dec. 18, 1991, and applicable to funds authorized to be appropriated or made available after Sept. 30, 1991, and, with certain exceptions, not applicable to funds appropriated or made available on or before Sept. 30, 1991, see section 1100 of Pub. L. 102-240, set out as a note under section 104 of this title.

**EFFECTIVE DATE OF 1984 AMENDMENT**

Amendment by Pub. L. 98-473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of this amendment, see section 235(a)(1) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

**MATERIALS PRODUCED BY CONVICT LABOR**

Pub. L. 101-162, title II, § 202, Nov. 21, 1989, 103 Stat. 1002, provided that: “During fiscal year 1990 and hereafter, materials produced by convict labor may be used in the construction of any highways or portion of highways located on Federal-aid systems, as described in section 103 of title 23, United States Code.”

Similar fiscal year provisions were contained in the following appropriation acts:

Pub. L. 100-459, title II, § 202, Oct. 1, 1988, 102 Stat. 2199.

Pub. L. 100-202, § 101(a) [title II, § 202], Dec. 22, 1987, 101 Stat. 1329, 1329-15.

Pub. L. 99-500, § 101(b) [title II, § 202], Oct. 18, 1986, 100 Stat. 1783-39, 1783-51, and Pub. L. 99-591, § 101(b) [title II, § 202], Oct. 30, 1986, 100 Stat. 3341-39, 3341-51.

Pub. L. 99-180, title II, § 202, Dec. 13, 1985, 99 Stat. 1146.

Pub. L. 98-411, title II, § 202, Aug. 30, 1984, 98 Stat. 1558, repealed by Pub. L. 100-17, title I, § 112(b)(2), Apr. 2, 1987, 101 Stat. 149.

Pub. L. 98-166, title II, § 202, Nov. 28, 1983, 97 Stat. 1085.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in section 121 of this title.

**§ 115. Advance construction**

(a) **SUBSTITUTE, CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT, SURFACE TRANSPORTATION, BRIDGE, PLANNING, AND RESEARCH PROJECTS.**—

(1) **GENERAL RULE.**—Subject to paragraph (2), when a State—

(A)(i) has obligated all funds apportioned or allocated to it under section 103(e)(4)(H),

104(b)(2), 104(b)(3), 104(f), 144, or 307 of this title, or

(ii) has used or demonstrates that it will use all obligation authority allocated to it for Federal-aid highways and highway safety construction, and

(B) proceeds with a project funded under such an apportionment or allocation without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit the State to implementation of projects with the aid of Federal funds previously apportioned or allocated to it or limit a State to implementation of a project with obligation authority previously allocated to it for Federal-aid highways and highway safety construction,

the Secretary, upon approval of an application of the State, is authorized to pay to the State the Federal share of the cost of the project when additional funds are apportioned or allocated to the State under such section or when additional obligation authority is allocated to it.

(2) PLANS, SPECIFICATIONS, AND APPLICABLE STANDARDS.—The Secretary may only make payments to a State with respect to a project if—

(A) prior to commencement of the project the Secretary approves the project in the same manner as the Secretary approves other projects, and

(B) the project conforms to the applicable standards under this title.

(b) INTERSTATE AND NATIONAL HIGHWAY SYSTEM PROJECTS.—

(1) IN GENERAL.—When a State proceeds to construct any project on the National Highway System or the Interstate System without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit the State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon approval of application of the State, is authorized to pay to the State the Federal share of the cost of construction of the project when additional funds are apportioned to the State under section 104(b)(1) or 104(b)(5), as the case may be, if—

(A) prior to the construction of the project the Secretary approves the plans and specifications therefor in the same manner as other projects, and

(B) the project conforms to the applicable standards under section 109 of this title.

(2) BOND INTEREST FOR PROJECTS UNDER CONSTRUCTION ON JANUARY 1, 1983.—For any project under construction on January 1, 1983, on the Interstate System and converted to a regularly funded project after January 1, 1983, for which the proceeds of bonds issued by the State, county, city, or other political subdivision of the State were used, any interest earned and payable on such bonds by the date of conversion is an eligible cost of construction, to the extent that the proceeds of such bonds have actually been expended in the construction of such projects.

(3) BOND INTEREST.—Subject to the provisions of this paragraph, the cost of construction of a project, the Federal share of which the Secretary is authorized to pay under this subsection, shall include the amount of any interest earned and payable on bonds issued by the State to the extent that the proceeds of such bonds have actually been expended in the construction of such project. In no event shall the amount of interest considered as a cost of construction of a project under the preceding sentence be greater than the excess of (A) the amount which would be the estimated cost of construction of the project if the project were to be constructed at the time the project is converted to a regularly funded project, over (B) the actual cost of construction of such project (not including such interest). The Secretary shall consider changes in construction cost indices in determining the amount under clause (A) of this paragraph.

(c) COMPLETION OF PROJECTS.—In determining the apportionment for any fiscal year under the provisions of section 103(e)(4), 104, 134, 144,<sup>1</sup> or 307 of this title, any such project constructed by a State without the aid of Federal funds shall not be considered completed until an application under the provisions of this section with respect to such project has been approved by the Secretary.

(d) INCLUSION IN TRANSPORTATION IMPROVEMENT PROGRAM.—The Secretary may approve an application for a project under this section only if the project is included in the transportation improvement program of the State developed under section 135(f).

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 90-495, §25(a), (b), Aug. 23, 1968, 82 Stat. 828, 829; Pub. L. 93-643, §111, Jan. 4, 1975, 88 Stat. 2285; Pub. L. 96-106, §4, Nov. 9, 1979, 93 Stat. 797; Pub. L. 97-424, title I, §113, Jan. 6, 1983, 96 Stat. 2106; Pub. L. 100-17, title I, §113(a)-(d)(1), Apr. 2, 1987, 101 Stat. 149, 150; Pub. L. 102-302, §103, June 22, 1992, 106 Stat. 252; Pub. L. 104-59, title III, §308, Nov. 28, 1995, 109 Stat. 582.)

#### AMENDMENTS

1995—Subsec. (d). Pub. L. 104-59 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

“(d) LIMITATION ON ADVANCED FUNDING.—The Secretary may not approve an application under this section unless an authorization for section 103(e)(4), 104, 144, or 307 of this title, as the case may be, is in effect for the fiscal year for which the application is sought beyond the currently authorized funds for each State. No applications may be approved which will exceed the State's expected apportionment of such authorizations.”

1992—Subsec. (a). Pub. L. 102-302, §103(1), in heading substituted “SUBSTITUTE, CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT, SURFACE TRANSPORTATION, BRIDGE, PLANNING, AND RESEARCH PROJECTS” for “SUBSTITUTE, URBAN, SECONDARY, BRIDGE, PLANNING, RESEARCH, AND SAFETY CONSTRUCTION PROJECTS”.

Subsec. (a)(1)(A)(i). Pub. L. 102-302, §103(2)(A), added cl. (i) and struck out former cl. (i) which read as follows: “has obligated all funds apportioned or allocated to it under section 103(e)(4)(H), section 104(b)(2), section 104(b)(6), section 104(f), section 130, section 144, section 152, or section 307 of this title, or”.

<sup>1</sup> So in original.

Subsec. (a)(2)(A). Pub. L. 102-302, §103(2)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: "prior to commencement of the project the Secretary approves the plans and specifications therefor in the same manner as other projects, and".

Subsec. (a)(3). Pub. L. 102-302, §103(2)(C), struck out par. (3) which read as follows: "LIMITATION WITH RESPECT TO CURRENTLY AUTHORIZED FUNDS.—The Secretary may not approve an application under this section unless an authorization for section 103(e)(4), 104, 130, 144, 152, or 307 of this title, as the case may be, is in effect for the fiscal year for which the application is sought beyond the currently authorized funds for such State. No application may be approved which will exceed the State's expected apportionment of such authorizations. This paragraph shall have no effect during the period beginning January 1, 1987, and ending September 30, 1990."

Subsec. (b). Pub. L. 102-302, §103(3), (4), in heading substituted "NATIONAL HIGHWAY SYSTEM" for "PRIMARY" and in par. (1) substituted "National Highway System" for "Federal-aid primary system".

Subsec. (c). Pub. L. 102-302, §103(5), struck out "152" after "144".

Subsec. (d). Pub. L. 102-302, §103(6), added subsec. (d) and struck out former subsec. (d) which read as follows: "LIMITATION ON ADVANCED FUNDING FOR FISCAL YEARS 1987-1990.—The Secretary may not approve an application of a State under this section with respect to a project with funds apportioned, or currently authorized to be apportioned, under section 103(e)(4)(H), 104, 130, 144, 152, or 307 if the amount of approved applications with respect to such projects exceeds the total of unobligated funds apportioned or allocated to the State under such section, plus such State's expected apportionment under such section from existing authorizations plus an amount equal to such State's expected apportionment under such section (other than section 104(b)(5)(A)) for one additional fiscal year. This subsection shall only be effective during the period beginning January 1, 1987, and ending September 30, 1990."

1987—Pub. L. 100-17, §113(d)(1)(A), substituted "Advance construction" for "Construction by States in advance of apportionment" in section catchline.

Subsec. (a). Pub. L. 100-17, §113(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

"(1) When a State has obligated all funds apportioned or allocated to it under section 103(e)(4), 104, or 144 of this title, other than Interstate funds, and proceeds to construct any highway substitute, Federal-aid system, or bridge project, respectively, other than an Interstate project funded under section 104(b)(5) of this title, without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the costs of construction of such project when additional funds are apportioned to such State under section 103(e)(4), 104, or 144, respectively, of this title if—

"(A) prior to the construction of the project the Secretary approves the plans and specifications therefor in the same manner as other projects, and

"(B) the project conforms to the applicable standards adopted under section 109 of this title.

"(2) The Secretary may not approve an application under this section unless an authorization for section 103(e)(4), 104, or 144 of this title, as the case may be, is in effect for the fiscal year for which the application is sought beyond the currently authorized funds for such State. No application may be approved which will exceed the State's expected apportionment of such authorizations."

Subsec. (b). Pub. L. 100-17, §113(b), inserted heading.

Subsec. (b)(1). Pub. L. 100-17, §113(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

"When a State proceeds to construct any project on the Interstate System without the aid of Federal funds, as that System may be designated at that time, in accordance with all procedures and all requirements applicable to projects on such System, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the cost of construction of such project when additional funds are apportioned to such State under section 104 of this title if—

"(A) prior to the construction of the project the Secretary approves the plans and specifications therefor in the same manner as other projects on the Interstate System, and

"(B) the project conforms to the applicable standards under section 109 of this title."

Subsec. (b)(2), (3). Pub. L. 100-17, §113(d)(1)(B)–(D), inserted headings and aligned pars. (2) and (3) with par. (1), as amended.

Subsec. (c). Pub. L. 100-17, §113(d)(1)(E), (F), inserted heading and substituted "134, 144, 152, or 307" for "or 144".

Subsec. (d). Pub. L. 100-17, §113(c), added subsec. (d). 1983—Subsec. (a). Pub. L. 97-424, §113(c), designated existing provisions as pars. (1) and (2) and designated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1); in par. (1) as so redesignated, substituted "When a State has obligated all funds appropriated or allocated to it under section 103(e)(4), 104, or 144 of this title, other than "interstate funds, and proceeds to construct any highway substitute, Federal-aid system, or bridge project, respectively, other than an Interstate project funded under section 104(b)(5) of this title, without the aid of Federal funds in accordance with all procedures and all requirements applicable to such a project, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the costs of construction of such project when additional funds are apportioned to such State under section 103(e)(4), 104, or 144, respectively, of this title if—", for "When a State has obligated all funds for any of the Federal-aid systems, other than the Interstate System, apportioned to it under section 104 of this title, and proceeds to construct any project without the aid of Federal funds, including one or more parts of any project, on any of the Federal-aid systems in such State, other than the Interstate System, as any of those systems may be designated at that time, in accordance with all procedures and all requirements applicable to projects on any such system, except insofar as such procedures and requirements limit a State to the construction of projects with the aid of Federal funds previously apportioned to it, the Secretary, upon application by such State and his approval of such application, is authorized to pay to such State the Federal share of the costs of construction of such project when additional funds are apportioned to such State under section 104 of this title if—"; in subpar. (A) thereof struck out "on the Federal-aid system involved" after "other projects"; and in par. (2) as so designated inserted "for section 103(e)(4), 104, or 144 of this title, as the case may be," after "unless authorization", and made a new sentence of existing provisions, beginning with "No application".

Subsec. (b)(2). Pub. L. 97-424, §113(a), substituted "1983" for "1978" wherever appearing.

Subsec. (b)(3). Pub. L. 97-424, §113(b), added par. (3).

Subsec. (c). Pub. L. 97-424, §113(d), substituted "section 103(e)(4), 104, or 144" for "section 104" after "provisions of".

1979—Subsec. (b). Pub. L. 96-106 designated existing provisions as par. (1) and cls. (1) and (2) thereof as subpars. (A) and (B) and added par. (2).

1975—Subsec. (a). Pub. L. 93-643, §111(a), substituted "other than the Interstate System" for "including the Interstate System" in two places.

Subsecs. (b), (c). Pub. L. 93-643, §111(b), added subsec. (b) and redesignated former subsec. (b) as (c).

1968—Subsec. (a). Pub. L. 90-495, §25(a), extended advance construction authority to all the Federal-aid highway systems rather than just the Interstate System but provided that anticipation of future apportionments by States should only be permitted for those years for which authorizations have been established by law.

Subsec. (b). Pub. L. 90-495, §25(b), struck out reference to subsec. (b)(5) of section 104 of this title.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

### § 116. Maintenance

(a) It shall be the duty of the State highway department to maintain, or cause to be maintained, any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts. The State's obligation to the United States to maintain any such project shall cease when it no longer constitutes a part of a Federal-aid system.

(b) In any State wherein the State highway department is without legal authority to maintain a project constructed on the Federal-aid secondary system, or within a municipality, such highway department shall enter into a formal agreement for its maintenance with the appropriate officials of the county or municipality in which such project is located.

(c) If at any time the Secretary shall find that any project constructed under the provisions of this chapter or constructed under the provisions of prior Acts, is not being properly maintained, he shall call such fact to the attention of the State highway department. If, within ninety days after receipt of such notice, such project has not been put in proper condition of maintenance, the Secretary shall withhold approval of further projects of all types in the State highway district, municipality, county, other political or administrative subdivision of the State, or the entire State in which such project is located, whichever the Secretary deems most appropriate, until such project shall have been put in proper condition of maintenance.

(d) PREVENTIVE MAINTENANCE.—A preventive maintenance activity shall be eligible for Federal assistance under this title if the State demonstrates to the satisfaction of the Secretary that the activity is a cost-effective means of extending the useful life of a Federal-aid highway.

(Pub. L. 85-767, Aug. 27, 1958, 72 Stat. 896; Pub. L. 86-70, §21(d)(2), (e)(3), June 25, 1959, 73 Stat. 145, 146; Pub. L. 90-495, §26, Aug. 23, 1968, 82 Stat. 829; Pub. L. 95-599, title I, §124(d), Nov. 6, 1978, 92 Stat. 2705; Pub. L. 97-424, title I, §114, Jan. 6, 1983, 96 Stat. 2107; Pub. L. 100-17, title I, §125(b)(2), Apr. 2, 1987, 101 Stat. 167; Pub. L. 104-59, title III, §309, Nov. 28, 1995, 109 Stat. 582.)

#### AMENDMENTS

1995—Subsec. (d). Pub. L. 104-59 added subsec. (d).

1987—Subsecs. (d), (e). Pub. L. 100-17 struck out subsecs. (d) and (e) which read as follows:

“(d) The Secretary in consultation with the State highway departments and interested and knowledgeable private organizations and individuals shall as soon

as possible establish national bridge inspection standards in order to provide for the proper safety inspection of bridges. Such standards shall specify in detail the method by which inspections shall be conducted by the State highway departments, the maximum time lapse between inspections and the qualifications for those charged with the responsibility for carrying out such inspections. Each State shall be required to maintain written reports to be available to the Secretary pursuant to such inspections together with a notation of the action taken pursuant to the findings of such inspections. Each State shall be required to maintain a current inventory of all bridges.

“(e) The Secretary shall establish in cooperation with the State highway departments a program designed to train appropriate employees of the Federal Government and the State governments to carry out bridge inspections. Such a program shall be revised from time to time in light of new or improved techniques. For the purposes of this section the Secretary may use funds made available pursuant to the provisions of section 104(a) and section 307(a) of this title.”

1983—Subsec. (c). Pub. L. 97-424 substituted “State highway district, municipality, county, other political or administrative subdivision of the State, or the entire State in which such project is located, whichever the Secretary deems most appropriate,” for “entire State” after “all types in the”, and struck out exception for a situation where such project was subject to an agreement pursuant to subsection (b) of this section, in which case approval was to have been withheld only for secondary or urban projects in the county or municipality where such project is located.

1978—Subsec. (d). Pub. L. 95-599 struck out provisions limiting provisions of the subsection to the Federal-aid system.

1968—Subsecs. (d), (e). Pub. L. 90-495 added subsecs. (d) and (e).

1959—Subsec. (a). Pub. L. 86-70, §21(e)(3), substituted “It” for “Except as provided in subsection (d) of this section, it”.

Subsec. (d). Pub. L. 86-70, §21(d)(2), repealed subsec. (d) which related to expenditure of funds apportioned to the Territory of Alaska and contributed by the Territory for the maintenance of roads.

#### EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90-495 effective Aug. 23, 1968, see section 37 of Pub. L. 90-495, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by section 21(d)(2) of Pub. L. 86-70 effective July 1, 1959, see section 21(d) of Pub. L. 86-70, set out as a note under section 103 of this title.

Amendment by section 21(e)(3) of Pub. L. 86-70 effective July 1, 1959, see section 21(e) of Pub. L. 86-70, set out as a note under section 101 of this title.

#### ESTABLISHMENT OF MINIMUM FEDERAL GUIDELINES FOR MAINTENANCE; STUDY BY NATIONAL ACADEMY OF SCIENCES AND REPORT

Section 163 of Pub. L. 100-17 directed Secretary to enter into appropriate arrangements with the National Academy of Sciences to conduct a complete investigation of the appropriateness of establishing minimum Federal guidelines for maintenance of the Federal-aid primary, secondary, and urban systems and, not later than 18 months after entering into appropriate arrangements, the National Academy of Sciences was to submit to Secretary and Congress a report on the results of the investigation and study together with recommendations (including legislative and administrative recommendations) concerning establishment of minimum Federal guidelines for maintenance of the Federal-aid primary, secondary, and urban systems.

### § 117. Certification acceptance

(a) The Secretary may discharge any of his responsibilities under this title relative to proj-